

REMARKS

Election

Applicant elected the invention of group I, organopolysiloxane polymer.

As species, applicant elected the organohydrogen polysiloxane expressed by $M_2D_{40}D^H_2$ as ingredient (a2) and polyglycerol diallylether as ingredient (b1), which were used in Example 1 (see, page 38, lines 28 and 29).

Applicants respectfully disagree with the restriction. The Patent Office has not established that it would pose a serious burden on the Examiner to search all the groups. No further, or only a minimal, search would be necessary to allow the remaining groups once the elected claims are allowed.

All the claims of the non-elected groups comprise the polymers of the elected group. Thus if the elected group products themselves are patentable, products comprising the same elected patentable products should be patentable as well.

Furthermore, the products of the non-elected groups are combinations of the elected group products (the elected polymers) and other components. As such, it is respectfully submitted that the polymers of the elected claims and the combination of said polymers and other components are related as combination-subcombination. Since they are related as combination-subcombination, the standard for requiring restriction herein is not met.

In order to establish that combination and subcombination inventions are distinct, two-way distinctness must be demonstrated. To support a requirement for restriction, both two-way distinctness and reasons for insisting on restriction are necessary, i.e. separate classification, status, or field of search. See MPEP §808.02. If it can be shown that a combination, as claimed

(1) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and

(2) the subcombination can be shown to have utility either by itself or in other and different relations, the inventions are distinct. When these factors cannot be shown, such inventions are not distinct.

(Emphasis added.) (M.P.E.P. §806.05(c))

It is submitted that the first requirement for two-way distinctness is not established herein. The combination does require the particulars of the subcombination. The products of the non-elected groups all require the exact same polymers of the same scope as the

subcombination claims of the elected group. To this end, the combination claims are even dependent upon the subcombination-product claims and the subcombination-products are an essential distinguishing feature of the combination-products.

It is respectfully submitted that when the relationship between the claimed subject matter is properly characterized, there is no basis for restriction herein. Thus, the restriction requirement should be withdrawn.

Amendments

Obvious typing errors are corrected in the specification whose correction is also obvious. No new matter has been added.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,
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